

[Doc. 26]

Petitioner is hereby informed that summary judgment is a procedural device available for prompt and expeditious disposition of a controversy which would normally be resolved through a trial. Summary judgment is a method to avoid trial when there is no dispute as to material fact. Petitioner has filed a petition for writ of habeas corpus. “[T]he writ of habeas

1 corpus is not a proceeding in the original criminal prosecution but an independent civil suit.”
2 Riddle v. Dyche, 262 U.S. 333, 335-336, 43 S.Ct. 555, 555 (1923); *See, e.g. Keeney v.*
3 Tamayo-Reyes, 504 U.S. 1, 14, 112 S.Ct. 1715, 1722 (1992) (O’Connor, J., dissenting).
4 Modern habeas corpus procedure has the same function as an ordinary appeal. Anderson v.
5 Butler, 886 F.2d 111, 113 (5th Cir. 1989); O’Neal v. McAnnich, 513 U.S. 440, 442, 115 S.Ct.
6 992 (1995) (federal court’s function in habeas corpus proceedings is to “review errors in state
7 criminal trials”(emphasis omitted)). In a habeas proceeding, the petitioner does not proceed
8 to trial. Therefore, Petitioner’s motion for summary judgment is improper. For all practical
9 purposes, summary judgment is equivalent to the Court’s making a determination on the
10 merits of a habeas petition. As the Court will rule on the petition for writ of habeas corpus in
11 due course, a motion for summary judgment in a habeas proceeding serves no purpose.
12 Accordingly, the request for summary judgment will be DISREGARDED.

13 Petitioner is informed that if he wishes to contest Respondent’s motion to dismiss, he
14 must do so by filing an opposition to that motion. Petitioner is HEREBY GRANTED thirty
15 (30) days from the date of service of this order within which to file an opposition to
16 Respondent’s motion to dismiss. Respondent is granted fifteen (15) days thereafter to file a
17 reply.

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19 IT IS SO ORDERED.

20 **Dated: December 8, 2006**
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/s/ William M. Wunderlich
22 UNITED STATES MAGISTRATE JUDGE
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